

CIVIL REVISION APPLICATION NO. 1065 OF 1996.

Date of decision: 20.2.1997

For approval and signature

The Honourable Mr. Justice R. R. Jain

Mr. B.A. Surti, advocate for the petitioner.

Mr. S. A. Qureshi, advocate for respondent.

1. Whether Reporters of Local Papers may be allowed to see the judgment? No
2. To be referred to the Reporter or not? No
3. Whether their Lordships wish to see the fair copy of judgment? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

Coram: R.R.Jain, J.

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February 20, 1997.

Oral judgment:

Rule. Mr. S.A. Qureshi, learned advocate waives service of rule on behalf of the respondent.

The respondent/original plaintiff filed Rent Suit No. 557 of 1994 against the present petitioner/defendant claiming arrears of rent and possession. From the record it appears that despite service of process the defendant did not appear hence exparte decree was passed on 27.6.1995. Thereafter the respondent/ landlord filed Regular Darkhast No. 37 of 1995 whereupon notice came to be issued to the present petitioner/tenant. Thus having come to know about exparte decree the petitioner filed an

application for setting aside decree with an application for condonation of delay of six months and 25 days. The application was registered at 3/96. The court below was not satisfied about the sufficiency of grounds canvassed and rejected the application for condonation of delay vide order dated 11.3.1996. Aggrieved by that order the petitioner/tenant has preferred this revision application.

I have heard the learned advocates. Perused the impugned order.

The court below has observed that the petitioner has not been able to show sufficient cause for condonation of delay. However, on perusal of the application it appears that right from the day on which he received the process of court he was vigilant about his rights and was seeking legal advice for taking appropriate steps in the matter. It is in these circumstances that the delay has been caused. Of course, Mr. Qureshi has strongly opposed but has not been able to show that the petitioner has been negligent and has deliberately caused delay with a view to delay the proceedings. On the contrary in para 3 of the impugned order the learned Judge has discussed about some dates which clearly go to show that the petitioner was vigilant and for the reasons stated could not file the application resulting into delay. In my view, it is just and sufficient cause for not approaching the court within the period of limitation. In these circumstances, in my view, the court below has taken a hyper-technical view in not condoning delay. Hence, the impugned order deserves to be quashed and set aside.

In the result, the impugned order dated 11.3.1996 passed by the learned Civil Judge (S.D.), Bharuch below Miscellaneous Application No. 3/1996 is hereby quashed and set aside. The application stands allowed. Delay is condoned. Rule is made absolute to the aforesaid extent. In the facts and circumstances of the case, petitioner is directed to pay Rs.1,500/- as costs to the respondent.